Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Review of the Pioneer's	)	ET Docket No. 93-266
Preference Rules	)	

COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS

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November 15, 1993

SUMMARY

Competitive bidding will fundamentally change the way the Commission issues licenses, but it will not alter the pressing need for innovation in spectrum-based technologies and services. Neither will it change the basic procedures the Commission will use to determine whether to allocate spectrum to new services. It thus will not diminish the need for a pioneer preference policy.

If preferences are eliminated, innovators would be discouraged from pioneering new services and technologies in the United States rather than abroad. Commission policies would continue to require innovators to place their discoveries in the public record to convince the Commission to allocate spectrum to new services with no assurance that they can be licensed to provide the services they pioneer. After having donated their pioneering efforts to the public, innovators would be forced to compete at auction against the deep-pocketed companies they educated with their efforts. Patent protection will provide few benefits; one cannot patent an idea, yet innovative new ideas are precisely what is needed to bring new services to the American public. Pioneers will have no advantage in auctions.

Broadband PCS innovators such as American Personal Communications ("APC"), who have relied on the existence of pioneer preferences and have committed thousands of pages representing four years of experimental and market research to the public record, certainly will have no advantage in the

upcoming auctions for PCS licenses. Now that the process has been a success and the Commission will issue PCS licenses, those whose research made PCS possible will have no advantage in bidding for PCS licenses against those who have simply read the public record and quietly amassed capital.

Innovation can be fostered only if deserving pioneers have the certainty of obtaining an identifiable license to provide to the public the service they have pioneered, which will not be the case in an auction environment. This applies with special force to broadband PCS pioneers, who face license auctions in a matter of months. PCS pioneer preferences should be finalized now. Eliminating preferences, or changing the rules that will apply to PCS preferences, would constitute impermissible retroactive rule making. And any attempt to draw a line between narrowband and broadband PCS preferences -- honoring the former and calling the latter into question, even though the only differences between the two services is the Commission's own decision to issue a narrowband decision before a broadband decision -- would be simply arbitrary.

The controversy surrounding the three basic choices for preference territories available under the Second Report could add to the Commission's hesitancy to finalize broadband PCS preferences. Given that PCS pioneers helped create the industry that will permit the government to realize significant auction revenues, we believe it reasonable for PCS

pioneers to receive 30 MHz MTA licenses. But if this option is seen as too geographically extensive, the Commission need not award a 20 MHz or, even more unthinkably, a 10 MHz BTA to pioneers. Rather, it may provide pioneers with a portion of a 30 MHz MTA, as APC has proposed and describes in these comments.

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TO: The Commission

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Competitive bidding will effect a fundamental change in the way the Commission issues licenses. It will not, however, change the basic procedures the Commission will use to determine whether to allocate spectrum for new services. And it will not, to be sure, change the pressing need for innovation in spectrum-based technologies and services. It will not, then, diminish the need for pioneer preferences.

If preferences are eliminated, innovators would be discouraged from pioneering new services and technologies in the United States rather than abroad. Commission policies would continue to require innovators to reveal their discoveries in the public record to convince the Commission to allocate spectrum to new services with no assurance that they can be licensed to provide the services they pioneer. After having donated their pioneering efforts to the public, innovators would be forced to compete at auction against the deep-pocketed companies they educated with their efforts. Pioneers will have no advantage in auctions.

This is especially true when innovators have relied on the existence of pioneer preferences and committed

thousands of pages to the public record representing years of experimental and market research. American Personal Communications ("APC")[1/] and other tentative pioneers have done just that in pioneering personal communications services ("PCS"). Now that the process has been a success and the Commission will issue PCS licenses, those whose research made PCS possible will have no advantage in bidding for PCS licenses against those who have simply read the public record and quietly amassed capital.

Retroactively changing the rules applicable to PCS pioneer preferences would be unfair and unlawful. As APC describes in detail below, refusing now to reward preferences would be impermissible retroactive rule making, and the distinction between broadband and narrowband PCS the Commission attempts to draw is arbitrary in the extreme.

But most importantly, denying preferences to PCS pioneers now would not comport with the standards of fairness and justice the public expects of the Commission. Pioneers such as APC invested years of hard work and placed millions of dollars at risk upon the strength of the Commission's string of unanimous votes in favor of preferences. APC, for one, began its work in 1989 as a two-person company seeking an experimental license. In the early days when financial

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[1/] American PCS, L.P., d/b/a American Personal Communications, a partnership in which APC, Inc. is the general managing partner and The Washington Post Company is an investor/limited partner.

institutions wouldn't fund a venture as speculative as PCS, APC obtained the backing of The Washington Post Company and embarked on a world-class research program. APC's efforts -- particularly its spectrum research -- have surmounted the obstacles that could have prevented the Commission from authorizing PCS. Other parties made important contributions as well, in full reliance on the Commission's continued assurances that preferences would be awarded. Withholding the reward at the end of the race would simply be wrong.

The Commission thus should finalize PCS pioneer preferences. It need not, however, be limited by the three general categories of PCS licenses created by the Second Report & Order in the PCS docket in defining PCS preference areas. The Commission also may award a portion of a 30 MHz MTA, as APC has proposed and as we describe here.

I. THE COMMISSION SHOULD MAINTAIN ITS PIONEER PREFERENCE POLICY PROSPECTIVELY.

As discussed in Section II below, fairness, decency, and the law -- all compel retention of pioneer preferences where the policy has already been fully relied on. But, in the case of future applications, maintenance of the policy is, quite differently, a matter for the Commission's discretion. Nevertheless, we urge the Commission to retain the pioneer's preference principle.[2/]

[2/] Indeed, broadband PCS is an outstanding example of how the policy did in fact create incentives for innovators and how the public benefits as a result.

A. The Principle Is Sound.

The Commission's frequency allocation and licensing processes do distort the normal workings of the marketplace, deprive spectrum-based innovators of being able to reap the benefits of their innovations and, therefore, discourage spectrum-based pioneering. To counter these unfortunate and unintended consequences of the Commission's rulemaking and licensing processes for new services, the pioneer preference policy gives innovators the prospect of an assurance of a license and an opportunity to launch their innovations without waiting for the licensing process to take place.

Auctions would not effectively address either of the disincentives to invention inherent in the Commission's rulemaking and application processes, and therefore, do not obviate the need for a preference policy. As to the first benefit, the Notice of Proposed Rule Making (the "Notice") suggests that innovators might be able to attract more capital and thereby have a better chance to win at auction.[3/] Wall Street will not, however, rush to fund a new spectrum-based service or technology in the abstract -- capital markets fund proposals for specific markets. Where the innovation pertains to how the Commission should structure the service (e.g., spectrum-sharing in the case of broad-band PCS), it might

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[3/] Broadband PCS innovators, in reliance on the preference policy, placed their innovative ideas in the public record and thus gave up any potential advantage. See infra Part II(C).

provide no advantage to an individual business -- even though it might be crucial to the industry overall -- and hence would attract no capital benefits to the innovator in the financial marketplace.

As to the second of the two benefits conferred by the preference policy, auctions would not enable innovators to launch their service any earlier than the normal licensing process would permit.[4/] Because of the delays experienced in licensing (delays that will inevitably recur[5/]), innovators will still have to "tip their hand" to the communications community at large well before bringing their service to market. Moreover, few new services will qualify for patent or copyright protection -- one cannot patent an idea, yet new ideas are precisely what the preference program is all about.

Accordingly, the switch to auctions as the mechanism for awarding licenses would, at most, have only haphazard and minor impact on the shortcomings in the Commission's normal

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[4/] If the auctions were true spectrum auctions and not license auctions or if the Commission had a "flexible use" policy under which spectrum could be put to a new use without regulatory approval, newcomers could obtain a timing advantage by virtue of their foresight.

[5/] In the context of an auction, significant delay will result from the necessity of seeking Commission approval for use of a block of spectrum to provide a new proposed service. The Commission does not propose to auction spectrum without earmarking its use (and Congress did not provide the Commission with that authority); consequently, an innovator will still be required to show its hand in order to launch and successfully prosecute the rulemaking that will make it possible to obtain a license.

rulemaking and licensing processes, and the rationale for the preference policy continues to be compelling.

B. Concerns About Difficulties In Implementing The Program Are Not A Sufficient Reason For Abandoning The Principle.

After indicating that the concept of a preference policy is just and useful, Commissioner Duggan has questioned whether it can be effectively administered. The proper response is, however, to design cures for the perceived problems, not give up the policy altogether.[6/]

If the Commission is concerned about making case-by-case determinations about the merits of particular preference applications, it should take heart from the fact that even lay juries and judges who are not experts have to make similar decisions based on careful and particularized examination of the facts every day of the year. Patent examiners do the same thing. Bright line rules are indeed easier to administer than standards that require the exercise of judgment. However, ease of application is not the only touchstone of public policy and does not justify ignoring the objectives that the Commission sought to further by adopting its preference policy in the first instance.

[6/] As the Commission correctly noted in adopting the preference policy, "failing to implement a preference for fear that it may not be perfectly structured represents a far greater detriment to the public interest than implementing an imperfect preference." Establishment of Procedures to Provide a Preference to Applications Proposing an Allocation for New Services, Report and Order, 6 F.C.C. Rcd. 3488, 3490 (1991).

Nor should the Commission be daunted by the possibility of judicial appeal.[7/] New legislation, new regulations and new policies are virtually always subject to judicial review. That this is so does not demonstrate that the new legislation, regulations and policies are wrong. Indeed, as a result of a few court and agency cases, principles are fleshed out and validated and procedures are fine-tuned. The areas of uncertainty and controversy are reduced. The system works.

The principal force of our position is directed toward urging the Commission to persevere in some sort of preference policy. We believe the Office of Engineering and Technology has the requisite expertise to advise the Commission on the selection of preference awardees. We are also comfortable with the procedural changes proposed in the Commission's Notice (¶¶ 13-17).

II. THE COMMISSION SHOULD FINALIZE ALL TENTATIVE PCS PREFERENCES.

The Commission seeks comment on "whether any repeal or amendment of our [pioneer preference] rules should apply" retroactively to certain pioneer preference awards that it initially granted, including the tentative pioneer preference grants for broadband PCS that the Commission issued to APC,

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[7/] In our view, the threat of successful appeal of the preference policy is vastly overrated.

Omnipoint, and Cox in November 1992.[8/] Notice, ¶ 19. Regardless of whether the Commission decides to continue its preference policy prospectively, the Commission cannot and should not apply any changes in its preference policy retroactively to current preference holders.

A. It Would Be Unfair To Change Or Eliminate The Preference Policy Retroactively.

APC believes that the retroactive modification (or revocation) of the Commission's preference policy would be inequitable in the extreme. Simply put, broadband PCS innovators, responding to the Commission's offer of preferences, have placed substantial reliance on the Commission's existing policy. These innovators invested significant capital in PCS; this capital included not only large high-risk financial resources, but also their creative efforts and energy. The decision to commit millions of dollars and years of hard work into pioneering PCS rested on the promise and strength of the Commission's preference policy. As a result, American PCS is poised to provide new and important consumer services, and in the process will inject additional vigorous competition in the wireless marketplace. Because of the PCS innovators' labors, PCS will be launched more quickly, more inexpensively and in a more advanced state. PCS will serve more people, and will

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[8/] If the Commission believes additional broadband preferences should be awarded to others, it should finalize those preferences as well.

generate more jobs and greater export opportunities than it would have in the absence of the pioneers' efforts.

The efforts of PCS pioneers have enhanced the prospects for substantial auction revenues, because these innovators' solutions to technological and other issues permitted PCS to go forward despite daunting technical obstacles that would have been insurmountable in the not-so-distant past. Pioneers also have demonstrated the scope of consumer demand and the feasibility of the business, creating an industry and an investment community that will make substantial bids for licenses to provide its services. Indeed, the Commission has placed significant reliance on both the economic and technical spadework undertaken by companies like APC.[9/]

The Commission induced this expenditure of financial and human resources by its adoption of a pioneer preference policy. It continued to hold out the preference policy by unanimously applying or affirming it nine different times, and as recently as September 23 when it said it would soon finally determine broadband PCS grants. These actions were taken throughout the course of the PCS pioneers' activities -- on

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[9/] For example, APC's efforts were mentioned no fewer than 13 times at the Commission's September 23 1993 meeting at which the Commission adopted its licensing plan for PCS and no fewer than 30 times in the Commission report and order implementing this decision.

January 16, 1992;[10/] February 13, 1992;[11/] July 16, 1992;[12/] August 5, 1992;[13/] October 8, 1992;[14/] December 10, 1992;[15/] January 14, 1993;[16/] March 8, 1993;[17/] and June 24, 1993.[18/]

[10/] Request for Pioneer's Preference in Proceeding to Allocate Spectrum for Fixed and Mobile Satellite Services for Low-Earth Orbit Satellites, Tentative Decision, 7 F.C.C. Rcd. 1625 (1992) (tentative grant to VITA)

[11/] Establishment of Procedures to Provide a Preference to Provide a Preference to Applicants Proposing an Allocation for New Services, 7 F.C.C. Rcd. 1808 (1992) (unanimous affirmance of preference rules).

[12/] Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 F.C.C. Rcd. 5677, 5735-36 (1992) (tentative grant to MTel).

[13/] Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 Mhz and the 2483.5-2500 Mhz Bands for Use by the Mobile-Satellite Service, Including Non-Geostationary Satellites, 7 F.C.C. Rcd. 6414, 6419-22 (1992) (policy applied to LEO services above 1 GHz).

[14/] Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 F.C.C. Rcd. 7794, 7797-99 (1992) (tentative grant to APC, Cox and Omnipoint).

[15/] Rulemaking to Amendment Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, 8 F.C.C. Rcd. 557, 565-66 (1993) (tentative grant to Suite 12 Group).

[16/] Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum to the Fixed-Satellite Service and the Mobile-Satellite Service for Low-Earth Orbit Satellites, 8 F.C.C. Rcd. 1812, 1817-18 (1993) (VITA preference finalized).

[17/] Establishment of Procedures to Provide a Preference to Provide a Preference to Applicants Proposing an Allocation for New Services, 8 F.C.C. Rcd. 1659, 1659 (1993) (unanimous affirmance of preference rules, citing "strong public interest benefits" of the policy).

[18/] Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, First Report and Order, FCC 93-329 (adopted June 24, 1993, released July 23, 1993), app. pending, BellSouth Corporation v. FCC, No. 93-1518

PCS innovators relied on these representations. In all good conscience, the Commission cannot now fail to honor its end of the bargain. It and the public have reaped the benefits of the contributions made by the pioneers; it cannot now pull back the preference awards.

It is also worth noting that the Notice neither suggests nor implies any second thoughts about the merits of APC's tentative preference. The possibility of withholding a grant to APC and other broadband PCS pioneers would be based solely on second thoughts about the policy itself, and not the underlying merits of any application. See Notice, at ¶ 19.

Finally, equity and fairness are not the only principles that obligate the Commission to issue final PCS preferences. Basic tenets of administrative law make clear that the Commission cannot retroactively alter the substantive rights of broadband PCS pioneers. Such action would clearly be impermissible as a matter of law. See Attachment A (setting forth legal impediments to retroactive application of administrative rules). APC is not asking for anything more than it was promised when it undertook its pioneering efforts -- the evaluation of its claim for a preference under the current rules. APC urges the Commission to finalize the broadband PCS preferences now, applying the existing rules.

(D.C. Cir.) (MTel preference finalized).

B. A Comparison With MTel's Case Where The Preference Was Finalized Demonstrates That The Broadband PCS Preferences Must Also Be Finalized.

Differential treatment of APC's preference request relative to MTel's and VITA's preference requests is simply not rational. The Commission has decided "as a matter of equity" to honor the preferences that it granted VITA and MTel, the narrowband PCS pioneer, while at the same time it appears poised to deny tentative broadband PCS preference grantees any benefit of the current rules. Notice, ¶¶ 18, 19.

The Notice's only justification for this differential treatment between narrowband and broadband PCS pioneers is that the FCC finalized MTel's grant on June 24, 1993, 47 days "before Congressional enactment of competitive bidding authority," whereas the date for finalizing the broadband PCS preference requests was or should have been September 23, 1993, 44 days after the effective date of the legislation.

Broadband PCS innovators did not cause the delay in finalizing the Commission's tentative preference grants. In fact, APC filed all relevant documents earlier than MTel:

	APC	MTel	APC Was Earlier By:
Filed Experimental Application	11/29/89 & 5/3/90	9/27/90	11 or 5 months
Granted Experimental Application	2/22/90 & 7/31/90	3/15/91	13 or 7½ months
Filed Pioneer Preference Request	7/30/91	11/12/91	3½ months

The fact is that broadband and narrowband PCS are part of the same proceeding, and the Commission merely chose to resolve narrowband PCS issues before resolving broadband PCS issues.[19/] And the auction legislation that was pending during all of 1993 -- and which was virtually certain to be passed and signed into law -- was part of the background for both broadband and narrowband PCS.[20/]

It is clear that APC should not be held responsible for the delays in finalizing its preference. After all, it was the Commission that decided to act on MTel's preference application before APC's application. Likewise, the Commission adopted a PCS Notice on July 16, 1992 without issuing a tentative decision on broadband PCS preferences, pulling the broadband PCS preference item from its agenda that very morning.[21/] The Commission decided to adopt a tentative decision on narrowband PCS preferences at that same meeting. The Commission decided to delay a tentative decision on

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[19/] Although APC has not analyzed the merits of MTel's pioneer preference grant in depth, from what we do know of it, we believe that MTel is deserving.

[20/] Notice, at ¶ 18. The Commission was plainly aware of the possibility of receiving authorization to utilize competitive bidding to license PCS well before August 1993. See, e.g., In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 F.C.C. Rcd. 5676, 5763-69 (1992) (discussing possible use of competitive bidding to license PCS). Likewise, the order finalizing Mtel's preference noted that auction legislation was pending and did not address licensee selection issues because auction legislation was being finalized.

[21/] Cf. 47 C.F.R. § 1.402(d) (1992).

broadband PCS preferences until October 8, 1992. The Commission decided to adopt a narrowband PCS Report & Order on June 24, 1993, but to delay adoption of a broadband PCS Report & Order until September 23, 1993. In short, the difference in the timing of consideration of narrowband and broadband preferences -- the only distinction between the broadband and narrowband PCS applicants -- is entirely the result of the Commission's own decisions.

Refusing to finalize tentative preferences granted for pioneering efforts completed well before passage of the auction legislation would be arbitrary and capricious. See Attachment B. Distinctions between preference aspirants must reflect reasoned decision making; a decision to revisit tentative preference grants for pioneering efforts undertaken in reliance on the current policy while honoring recently finalized grants (even in the same docket) would clearly constitute an arbitrary, capricious agency action.

C. Competitive Bidding Will Not Benefit Pioneers That Have Disclosed The Substance Of Their Efforts.

The Commission suggests that in the context of competitive bidding, innovators and pioneers may be able to obtain alternate benefits from their efforts from capital markets, and, therefore, the need for pioneer preference policy has been obviated. Notice, at ¶ 7. Although this consideration could apply prospectively, it is simply inapplicable to broadband PCS pioneers.

Companies like APC have already disclosed their discoveries to the general public in their efforts to obtain a preference. APC will not benefit from its position as a PCS pioneer in the capital markets or elsewhere; the market is already aware of APC's ideas, and other companies interested in providing PCS have been free to pursue similar proposals for some time.

APC has put on the public record the full results of its experiments and the details of its implementation plans, and did so at the Commission's invitation, embodied in its preference policy and in other explicit requests.[22/] Having now been through this process, APC will have no advantage in competitive bidding, it will have no assurance of receiving a license, and it will not be able to launch PCS services at an early date.

Nor is there any relation between our record of innovation and our ability to raise funds in the marketplace

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[22/] For example, two weeks before the Commission voted on the broadband PCS Report and Order, the FCC's Office of Plans and Policy and Office of Engineering and Technology requested APC to provide spectrum-availability data on various allocations in the 2100 MHz band. APC obtained raw data (at a cost of some $11,000) on all microwave users in that band across the United States and analyzed spectrum availability over the top 11 U.S. markets, working nights and weekends to provide the information in time for the Commission to make use of it. That submission formed the sole empirical basis for the Commission's decision to allocate PCS spectrum in the 2100 MHz band.

to outbid others.[23/] In short, the broadband PCS pioneers will reap no advantage from their innovation if their preferences are withdrawn and they must compete in the auctions with newcomers who will benefit from the innovators' pioneering efforts.

III. BROADBAND PCS PIONEERS SHOULD RECEIVE A 30 MHz MTA LICENSE OR AT THE LEAST A 30 MHz LICENSE FOR AN INTEGRATED COMMON CORE WITHIN THE MTA.

Broadband PCS pioneers have made major contributions to the creation of an industry that will bring an unprecedented number of highly demanded services to 60,000,000 American subscribers, create some 300,000 good new jobs, put the U.S. squarely in the vanguard of the international wireless telecommunications market, and provide the Federal government with significant revenues from license auctions. These contributions fully justify an award of 30 MHz/MTA licenses to broadband PCS pioneers. This grant would permit broad-vision PCS proponents to continue on the cutting edge of equipment and service innovation, to the benefit of the industry and the public that it will serve.

Nevertheless, the Commission's hesitancy to finalize broadband PCS preferences may reflect concern about the choice of the appropriate licensing area for PCS pioneers. The structure of the PCS Second Report could lead to a conclusion

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[23/] As for the revisions to the preference procedures proposed in the Notice (¶¶ 13-17), none would have altered our case for an award. Those procedural proposals are simply irrelevant to the merits of our grant.

that the Commission is constrained to select one of three options for broadband PCS preferences[24]:

- a 30 MHz MTA, which we believe is appropriate but which others might argue is geographically too extensive;
- a 20 MHz BTA, which could undercut an allocation reserved for small businesses, minorities, women and rural telcos;[25] or
- a 10 MHz BTA, which virtually all agree would be inappropriate.[26]

But there is another option the Commission can craft for the specific purpose of licensing pioneers. APC has

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[24] APC has discussed these options in more depth in Gen. Docket 90-314. See Letter from Wayne N. Schelle and Donald E. Graham to Hon. James H. Quello (Oct. 4, 1993); Letter from Wayne N. Schelle and Donald E. Graham to Hon. James H. Quello (Sept. 27, 1993).

[25] A 20 MHz BTA also would provide too little spectrum to permit pioneers to implement broad-vision PCS because of microwave congestion. It also would splinter, at least in some cases, a single wireless communications market by permitting the pioneer to serve only a portion of that market and it might not be eligible to bid for or buy the other 20 MHz BTAs set aside for designated parties in that market. Because of these and other shortcomings, it would also doom pioneers to a late and crippled start, thus depriving the public of the benefits their leadership would bring to the industry.

[26] A 10 MHz/BTA license in the 2100 MHz band would provide fatally inadequate spectrum for a broad-vision PCS service. It would be in a band in which no pioneer experimented and in which equipment will not be ready for some time, preventing pioneers from implementing the technologies and services they innovated and forcing them into the role of followers rather than leaders. It is even questionable whether 10 MHz services can survive at all (other than in a very narrow niche mode), given the delays and other handicaps they would suffer.

proposed a compromise that it believes is acceptable to all tentative PCS pioneers and that meets the goals of the pioneer preference policy in the context of the Commission's PCS Second Report. *Under this approach, a PCS pioneer would receive a 30 MHz license for a two-BTA area within an MTA* (or for a one-BTA area if it has economic integrity of its own and if the population or geographic scope of two BTAs is deemed to be too great).

This approach neutralizes the difficulties -- real or perceived -- in each of the three "basic" options:

- First, and most importantly, it grants a sufficient amount of 2 GHz spectrum for PCS pioneers to provide the service and technology innovations they pioneered.
- Second (as we discuss in more detail below), it creates a service area that makes economic sense, although not as geographically extensive as an MTA.
- Third, it preserves the ability of small businesses, businesses owned by minorities and women, and rural telephone companies to bid on a reserved spectrum block.
- Fourth (as we discuss in more detail below), it permits the Commission to auction the remaining, valuable territories in the MTA as either separate BTAs or an integrated whole.

This approach is fully within the Commission's authority to define licensing boundaries for wireless service areas. Given that the Commission permissibly may grant a single license for an MTA-size area, it follows that the Commission permissibly may grant a single license for a portion of an MTA. The Commission has authority, for example, to license a portion of a broadcast station's time to one party and another portion to another -- each party, in effect, being given a portion of the broadcast license. See 47 C.F.R. §§ 73.1705(a), 73.1705(c), 73.561(b) (1992).

The Commission recognized in the PCS Second Report that PCS service areas should reflect marketplace realities.[27/] In cases where marketplace realities reflect that a wireless communications market is composed of two BTAs, the Commission can and should recognize that reality by defining a pioneer's license by the boundaries of those two BTAs. The Commission has modified markets for precisely that reason in other contexts -- for example, the Commission modified several markets in cellular licensing proceedings to better reflect "actual local mobile service market areas."[28/] As another

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[27/] See Second Report, pp. 33-34.

[28/] 47 Fed. Reg. 10018, 10031 (1982). The Commission thus expanded the New York licensing area to include Nassau and Suffolk counties in New York and Jersey City-Patterson-Passaic, New Jersey; the Los Angeles-Long Beach, California licensing area to include Anaheim-Garden Grove and Riverside-San Bernardino-Ontario, California; the Detroit licensing area to include Ann Arbor, Michigan; and the Miami licensing area to include Fort Lauderdale-Hollywood, Florida.

example, the Commission routinely modifies broadcast television marketplaces by amending the Table of Allotments to recognize hyphenated dual or even triple markets.[29/]

The factual case for granting pioneers economically viable PCS markets is compelling. In the case of APC:

- the Washington, D.C./Baltimore, Maryland area now is treated as a single market by both cellular providers and by paging licensees;
- the Bureau of the Census has recognized Washington/Baltimore as a single market by creating a single Washington/Baltimore Consolidated Metropolitan Statistical Area ("CMSA");
- the Federal government treats Washington/Baltimore as a single area for various purposes, including employee compensation;
- APC's market research underscores the fact that consumers treat the Washington/Baltimore area as a single market for purposes of wireless telecommunications;[30/] and

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[29/] See 47 C.F.R. § 73.606 (1992). Examples include Albany-Schenectady, New York; Norfolk-Portsmouth-Newport News, Virginia; Linden-Newark, New Jersey; Winston-Salem, North Carolina; Monahans-Odessa, Texas; and Arecibo-Aguadilla, Puerto Rico.

[30/] APC conducted extensive quantitative research in the summer of 1993 in Washington/Baltimore to ascertain local consumer service area demand. Study participants completed computer-driven adaptive conjoint analysis and conjoint value analysis exercises that were designed to measure their preferences for different types of telecommunications services. Consumer reaction to coverage areas indicated that